



PUBLIC NOTICE

Federal Communications Commission
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DA 05-482

Released: February 24, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS
OF ICG CHOICECOM, L.P. AND ICG TELECOM GROUP, INC. BY TEL WEST
NETWORK SERVICES CORPORATION**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-61

Comments Due: March 10, 2005

Reply Comments Due: March 17, 2005

On February 11, 2005, Tel West Network Services Corporation ("Tel West NSC" or "Buyer"), ICG Telecom Group, Inc. ("ICG") and ICG ChoiceCom, L.P. ("ChoiceCom,"), (together with Tel West NSC and ICG, the "Applicants"), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ filed an application requesting authority to complete a transaction whereby Tel West NSC will acquire certain assets, including certain customer accounts from ChoiceCom.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because immediately following the transactions, (1) Applicants and their affiliates combined will hold less than a ten percent share of the interstate, interexchange market; (2) Applicants and their affiliates will provide local exchange service only in areas served by dominant local exchange carriers none of which are parties to the proposed transactions and; (3) none of the Applicants or their affiliates are dominant with respect to any service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services as ICG also holds Section 214 authority to provide international services on a global resale basis. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

Tel West NSC is a newly formed corporation organized under Washington law and wholly-owned by Jeff Swickard, an American citizen. Mr. Swickard also owns Tel West Communications, LLC (“Tel West, LLC”), a Seattle, Washington company, that provides telecommunications services to residential and small and medium sized business customers. More specifically, Tel West, LLC offers basic dial tone with vertical features, private line, data, and Internet access and is authorized to provide telecommunications services in several states. Applicants assert that key personnel and management of Tel West, LLC will bring their expertise and experience to Tel West NSC.

ICG Communications, Inc. (“ICG Parent”), a Delaware corporation, is the ultimate holding company of various ICG companies, including ICG and ChoiceCom. ICG Parent, through its operating subsidiaries, provides communications and information services over a nationwide fiber-optic data and voice network. It offers a range of resold and facilities-based local and long distance telecommunications services, data services, information services, and other communications solutions services, including service over a managed fiber-optic network with numerous points of presence nationwide. These services are primarily offered to medium to large-sized businesses, Internet service providers, interexchange carriers, and other telecommunications carriers.

ICG is a Colorado corporation authorized to provide local and/or intrastate long distance services in every state except Texas, Virginia and Alaska. In Virginia, ICG provides service through ICG Telecom Group of Virginia, Inc. (“ICG-Virginia”). In Texas, ICG provides service through ChoiceCom, a provider of domestic interstate services holding authority to provide local exchange and intrastate interexchange telecommunications services in Texas. ChoiceCom is a Delaware limited partnership owned in approximately equal parts by ICG and ICG Equipment Inc., the latter of which is a wholly-owned direct subsidiary of ICG Parent.

ICG Parent and Tel West NSC entered into an Asset Purchase Agreement on January 14, 2005 (“Agreement”). Pursuant to the Agreement, Applicants propose to complete a Transaction (“Transaction”) whereby Buyer will acquire substantially all of the assets and customer base of ChoiceCom. In connection with that proposed Transaction, Buyer will become an interstate and international carrier and will be responsible for providing service to ChoiceCom’s Texas customers transferred in connection with the Transaction.⁴

Applicants assert that the proposed Transaction will serve the public interest because the assignment of ChoiceCom’s customers’ accounts will ensure that those customers continue to receive uninterrupted interstate and international services under the same rates, terms and conditions as the services currently provided. In addition, the Applicants emphasize that all of the affected customers will receive notice of the proposed Transaction, and that the proposed

⁴ Although virtually all of ChoiceCom’s customers are being transferred to Buyer, ChoiceCom will continue to provide service to certain ICG nationwide customers and therefore will still operate on a limited basis in Texas. As a result, ICG and ChoiceCom do not seek approval to discontinue interstate or international service.

ownership change will not inconvenience, confuse or otherwise harm ChoiceCom's customers as it will be virtually transparent to customers in terms of the services these customers receive.⁵ Moreover, Applicants state that the proposed Transaction will allow ICG to continue to restructure its operations and allow ICG to continue to implement its business strategies going forward. In sum, the Applicants assert that the proposed Transaction is expected to enhance competition in the Texas market by introducing Buyer as a viable competitor while at the same time allowing ICG to continue the on-going restructuring of the company's operations.

GENERAL INFORMATION

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before March 10, 2005** and **reply comments on or before March 17, 2005**.⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236

⁵ Buyer asserts that it will file the required certification of compliance under separate cover.

⁶ *See* 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Kimberly Jackson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: kimberly.jackson@fcc.gov
- (4) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Kimberly Jackson at (202) 418-7393.

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